REMARKS

By the above actions, claim 1 has been further amended. In view of the amendment made and the following comments, further consideration of this application is now requested.

Before responding to the Examiner's positions on the merits of the application, it is noted that the Examiner has failed to act upon applicants' Request for Withdrawal of Premature Final Rejection that was filed on December 21, 2004. As noted in that Request, the Examiner made his Office Action of October 1, 2004, final citing MPEP § 706.07(b). However, the very section cited by the Examiner makes it clear that the Examiner could not properly make the October 1st Office Action final because

> it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

In this case, the Examiner issued an Advisory Action on July 14, 2004, which refused entry of Applicants' response because it raised new issues that would require further consideration and/or response. Thus, in accordance with the requirements of MPEP § 706.07(b), the first action in this RCE case could not properly be finally rejected based on the prohibition quoted above from MPEP § 706.07(b).

Accordingly, applicants are entitled to have this response to the rejections contained in the October 1st Office Action considered as a matter of right, not under the limitations imposed with respect to finally rejected claims. Therefore, it is again requested that the Examiner withdraw the finally rejected status imposed by his October 1, 2004, Office Action, and that the above amendments be entered.

In the event that the above request is not granted, then this response should be consider to contain a Petition under 37 CFR 1.181 seeking that the Director overrule the Examiner and require the Examiner to withdraw the finality of the October 1st Office Action, thereby requiring entry and consideration of this response as well as

eliminating the requirement that an appeal or further RCE be filed to maintain the pendency of this application.

Turning now to the Examiner's rejections of the claims, 1-7, 10, 11, 19 and 21, under either 35 U.S.C. § 102 or § 103, as being unpatentable over Bushek et al. ('755) alone or in view of Hakansson et al. ('170), these rejections should be withdrawn for the following reasons.

In making this rejection, the Examiner stated that the "releasable coupling comprises a transducer side coupling element (168, 165) and a micromanipulator-side coupling element (135, 139). Claim 1, as amended above, now specifies that "said releasable coupling unit enables replacement of the transducer in said position set by the micromanipulator prior to removal without readjustment of the micromanipulator." This effect is not obtainable by the Bushek et al. device.

In this regard, as described with respect to the PCT counterpart to Bushek et al. in paragraph [0016] on page 7 of the present application:

> ... after an exchange of the micromanipulator/transducer unit this unit must be newly adjusted in a troublesome manner in order to exactly align the transducer with the aimed side of stimulation. Thereby the reversion operation becomes distinctly more risky and prolonged, particularly when the tranducer postoperatively became defect and therfore an exchange of the transducer is required.

This results from the fact that the element which the Examiner construes as the releasable coupling is part of the micromanipulator and comprises the ball of a ball and socket joint that has an internal thread for a slide post by which the length of the telescopic slide post is adjusted. Thus, irrespective of which end of the Examiner's "releasable coupling" of the Bushek et al. reference is removed, when replacing the transducer, the coupling must be removed along with the transducer so that the position of the transducer must be adjusted again when it is replaced.

On the other hand, with the system of the present invention, as noted in the sentence of paragraph [0018] spanning pages 8 & 9, "the transducer position adjusted by the micromanipulator is preserved even in case of an exchange of the transducer, so that a new adjustment of the micromanipulator does not become necessary." As

can be seen from the quoted language of presently amended Claim 1, it has now been amended to bring out this characteristic of the present invention which is absent from the assembly of the Bushek et al. patent, and accordingly, the rejection of claims 1-7, 19, 21 and 22, under § 102(e), as being anticipated by the teachings of Bushek et al. should now be withdrawn.

With regard to the rejection of claims 10 and 11, under § 103(a), as being obvious in view of the teachings of Bushek et al. combined with the teachings of Hakansson et al., this rejection should also be withdrawn since there is nothing in the disclosure of Hakansson et al. which would overcome the noted deficiencies of Bushek et al.'s disclosure relative to presently amended claim 1.

That is, Hakansson et al.'s disclosure relates to a fundamentally different type of hearing apparatus than that of either the present applicants or Bushek et al. in that it relates to a hearing apparatus in which an external hearing aid is connected to the skull of the user via a detachable coupling of which only a portion of a female coupling part of male-female coupling is implanted. Furthermore, while male coupling element is able to snap-in to the female part for connecting them together, the coupling parts are separated by rotating the external male part (to which the hearing aid is connected) relative to the partially implanted female coupling part. There is absolutely nothing in the disclosure of Hakansson et al. that would indicate that such a coupling assembly would be usable in the fully implanted environment of Bushek et al. in which the entire coupling assembly would be located within the middle ear, one part being fixed to the mastoid, and the other holding a transducer against the stapes. In this regard, it is pointed out that the coupling assembly of Hakansson et al. is not designed to provide the type of adjustments provided by Bushek et al.'s coupling and that of the present invention. Thus, not only would it not be obvious to combine the teachings of these two patents, but any combination thereof that might be made would not result in a system having the structure and capabilities of the present invention.

For this reason, the rejection of claims 10 and 11, under § 103(a), is also inappropriate and should be withdrawn, such action being hereby requested.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved or should any new issues arise, which could be eliminated through further discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Lastly, it is noted that a separate Extension of Time Petition (three months) accompanies this response along with an authorization to charge the requisite fee to Deposit Account 19-2380 (740105-78). However, should that petition become separated from this Amendment, then this Amendment should be construed as containing such a petition. Likewise, any overage or shortage in the required payment should be applied to Deposit Account No. 19-2380 (740105-78).

Respectfully submitted,

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